

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Ortiz Analyst: Darrine Distefano Bill Number: SB 1980
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-25-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Permit the Director of the Department of Social Services to Inspect Returns of Group Home Licensees

SUMMARY

This bill, as it affects the department, would require the Franchise Tax Board (FTB) to permit the Director of Social Services to inspect the income tax returns of a group home licensee where the Director has determined there is reasonable suspicion that the licensee has committed fraud, which could be validated by specific and identified tax information.

This analysis will not address the bill's other changes regarding group home providers, as these other changes do not impact the FTB.

EFFECTIVE DATE

This bill would be effective January 1, 2001, and operative for inspection of returns after that date.

LEGISLATIVE HISTORY

SB 887 (99/00, vetoed by the Governor) was identical to SB 1980.

SPECIFIC FINDINGS

Federal and state law requires state agencies to use strict requirements and guidelines in the use of personal information. The Information Practices Act of 1977 (Civil Code Section 1798) and the California Public Records Act (Government Code Section 6250, et. seq.) provide measures to assure fair treatment of individuals who are the subjects of state agency records.

These acts place specific requirements on state agencies in the collection, use, maintenance and dissemination of information relating to individuals. With exceptions, individuals may review, obtain copies, request amendments and corrections and dispute information pertaining to them in state records.

Civil remedies and penalties are provided for violations that adversely affect individuals who are the subjects of state agency records.

The Revenue and Taxation Code (R&TC) provides for the confidentiality of tax returns and return information. All information on an individual personal income tax return is confidential, as well as the majority of information on corporate returns. The disclosure of confidential information to unauthorized entities is prohibited by law and is a misdemeanor criminal offense.

Board Position:

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_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

4/18/00

The R&TC allows the department to share information with several state agencies for tax purposes, such as the Employee Development Department and the Board of Equalization.

Certain exceptions allow the department to share information for non-tax purposes, such as with the Attorney General (AG) or other legal representatives of the state, in a matter in which the treatment of an item reflected on a tax return is or may be related to the resolution of an issue in a proceeding or investigation. The R&TC also allows the department to charge any state agency for the reasonable cost of its services when disclosing information.

In addition, **existing law** provides that the FTB may permit the Director of Social Services to inspect income tax returns of applicants, recipients of aid or responsible relatives. However, existing law provides stringent guidelines that limit the Director of Social Services access to only the current or previous year information and that limit the use of the information to determine or verify whether the applicant for or recipient of aid is eligible or entitled to such aid. Similar **state law** also exists for information concerning earned income.

This bill would require the FTB, subject to the limitations of federal law, to permit the Director of Social Services to inspect the income tax returns of a group home licensee who has been determined by the Director of Social Service, based on reasonable suspicion, to have committed fraud that can be validated by specific and identified tax information regarding the group home licensee.

The information provided to the state Department of Social Services (DSS) would be limited to the information that would assist the DSS in validating the suspected fraud by the group home licensee. The information obtained would be used or disclosed only for the purpose of enabling the Director of Social Services to validate the suspected fraud.

This bill would require that the request submitted to the FTB include written documentation that the Director of DSS has made a determination based upon reasonable suspicion that a group home provider has committed fraud, which could be validated by specific tax information.

Implementation Considerations

The bill contemplates referral of allegations of fraud by group home providers to a unit within the AG's Office for further investigation and prosecution. The bill does not authorize disclosure of tax return information to the AG in connection with referral and investigations of fraud, as contemplated by the bill. The disclosure of tax information from the Director of DSS to the AG's Office would be a violation of the state's existing disclosure laws.

The bill would permit the Director of DSS to inspect the income tax returns of a group home licensee who has been determined, based on reasonable suspicion, that a group home licensee has committed fraud. "Reasonable suspicion" is not defined. Many criminal investigations require a showing of "probable cause" that a crime has been committed. It is not clear how "reasonable suspicion" under the bill differs from "probable cause."

Once these concerns are resolved, implementation of this bill would not significantly impact the department's programs and operations.

FISCAL IMPACT

Departmental Costs

Since the department could request reimbursement for its services, this bill would not significantly impact the department's costs.

Tax Revenue Discussion

This bill would not impact the state's income tax revenues.

BOARD POSITION

Pending.